

## **DETAILED ACTION**

### ***Claim Objections***

The Examiner has objected to claims 1 and 23 stating that “the confidence level” should be changed to “confidence level” for lack of antecedent basis. Applicant has made this change and respectfully requests that the Examiner remove this objection.

Claim 12 has been amended to depend on claim 1 rather than on itself. Please remove this objection.

All dependency objections have been amended to overcome the claim objections. Please remove the objections.

### ***Claim Rejections – 35 USC § 112***

The Examiner stated that claims 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant has amended claim 11. The Applicant kindly requests that the Examiner remove this rejection.

### ***Claim Rejections – 35 USC § 103***

The Examiner stated that claims 1-5, 8-10, 12-24, 28, 30-38, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (U.S. Patent: 6,567,787) in view of Brockman et al (U.S. Patent: 5,826,240).

The Examiner stated that claims 6-7, 25-27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Stuart et al (U.S. Patent: 6,868,154).

The Examiner stated that claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Rtischev et al (U.S. Patent: 5,634,086).

The Examiner stated that claims 39 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Blair (U.S. Patent: 7,203,285).

The Examiner stated that claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Macleod Beck et al (U.S. Patent: 6,910,072).

The Examiner stated that claims 44-50, 52-54, 56-58, 62, 64, and 67-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al (U.S. Patent: 7,076,427) in view of Katz (WO 94/21084) (referenced in the parent application 09/785,048).

The Examiner stated that claims 51, 63, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al in view of Katz and further in view of Eilbacher et al (U.S. Patent: 6,724,887).

The Examiner stated that claims 55 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al in view of Katz and further in view of Macleod Beck (U.S. Patent: 6,910,072).

The Examiner stated that claims 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al in view of Katz and further in view of McIlwaine et al (U.S. Patent: 6,324,282).

The Applicant would like to address the independent claims as follows. In general, the following arguments apply to claims 1, 11, 23, 44, 68 and 69.

In the "Response to Arguments" section of the current paper, Office Action mailed 12/10/08, the Examiner has stated that the correct law is stated as "any need or problem known in the field of endeavor at the time of the invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *KSR International Co. v Teleflex Inc.*, 550 U.S. 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from the that of Applicant's endeavor may be *reasonably* pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention *considering his or her invention as a whole*. Applicant knows the law and it is set forth many times in the Response to Office Action dated 08/28/08. However, the Examiner does not look at the claimed invention as a whole, but rather has distilled the claimed invention down to a gist or a thrust as shown throughout the history of this application to fit the references to the claims. "[R]jections

on obviousness cannot be sustained by *mere conclusory* statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 550 U.S., 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there *is some teaching, suggestion, or motivation to do so*. (emphasis added) *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching as a guard against using hindsight in an obviousness analysis). As set forth above, these types of statements and the type of art is throughout the application and this point could be further embellished. However, this issue has been discussed, however the issue of interpreting the claim language, and considering both the invention and the prior art as whole has not.

The current Office Action mailed 12/10/08 is twenty seven pages long. If Examiner is confident that his references are in fact combinable, why do the Office Actions keep getting longer?

In fact, the Examiner, in the Office Action dated June 3, 2008 contradicts himself many times throughout the Office Action. For example, in the analysis in claim 1, he states “walker and Beck are an analogous art because they are from a similar field of endeavor in customer service analysis systems using speech recognition. However in independent claim 11, the Examiner stated a different reason for the combined references such as “it would have been obvious to modify the teachings of Walker in view of Brockman with the speech input conversion means taught by Rtischev in order to provide pre-processing used to implement speech recognition in Walker. In regards to independent claims 44 and 69. *While the Examiner continues to make statements that the prior art in the field of customer service endeavor – in the previous Office Actions, the Examiner has stated several reasons for the various combinations, thus contradicting himself many times in the reasons stated for the intended combinations.* Again, the Examiner has pieced together prior art to negate pieces of claim elements, while leaving out several other large portions of the same claim elements. However, Applicant will address the present issues.

In the present Response, Applicant will only address the statement by the Examiner that “the prior art of record fails to teach the various ‘*added*’ limitations (emphasis added). Applicant’s arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims distinguishes them from the references.” Due to the fact that the Examiner completely ignored these claim elements in his previous analysis, the Examiner did not meet the prima facie case of obviousness and is now shifting the burden of proof to Applicant. This is not the law. However, the Applicant will address these claim elements purely in the interest of expediting the prosecution of the instant invention.

Referring to claims 1 and 23, the Examiner stated that 1 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Rtischev et al (U.S. Patent: 5,634,086). On page 10 of the Office Action, he states that Walker, Brockman and Rtischev are analogous art because they are from a similar field of endeavor in recognizing speech corresponding to a script reading.

The Examiner, in numerous places throughout the Office Action, has made conclusory statements regarding the claims. For example, with respect to claim 1 on page 10 of the current Office Action, the Examiner stated that Walker provides the claim element “*determining via ~~the~~ confidence level thresholds of the least one automatic speech recognition component whether the at least one agent has adequately followed the at least one script by using the evaluated at least one voice interaction*”, however, in reading the quoted portions of Walker, this is not so. In complying with 37 CFR 1.111(b) such that they *do not* amount to general allegations that the claims define a patentable invention without specifically pointing out how the language of the claims distinguishes them from the references, Applicant will show the problems with the analysis and how Applicant’s invention is patentably distinct from the prior art.

The Examiner quotes Col. 6, lines 24-39, Col. 7 lines 45 – Col. 8 line 15; col. 10, lines 15-23 and Col. 13, lines 4-27. Each of these sections states in various ways the same thing. For example, Col. 6, lines 24-39 states “[t]he weekly bonus earned may be used to determine which of the plurality of prompts the operator may be instructed to

speak. For example, if the verbal complexity of the message is high, any prompt may be selected. Similarly, if the verbal message complexity is 'medium', the first three prompts stored in the computer database may be selected and if the verbal message complexity of the operator is 'low' only the first prompt stored in the prompt database may be selected. In such an embodiment, the first prompts would be simpler, and so more appropriate for operator that are less adapt at providing complex verbal messages". Each of the section quoted by the Examiner is similar to this passage, discussing bonuses earned for correctly spoken prompts, etc. This is not a "*confidence level threshold*" as used in Applicant's invention. *First and foremost, this is not what the claim states – as stated several times previously – the Examiner has not analyzed the claimed invention as a whole.*

Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art as whole. MPEP §2142.02. Distilling the invention down to a gist or to a thrust of the invention disregards the "as a whole" requirement. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F 2d 1540, 220 USPQ 303 (Fed Cir. 1983) *cert. denied*, 469 U.S. 851 (1984) (restricting consideration of the claims to 10% per second rate of stretching of unsintered PTFE and disregarding other limitations resulted in treating claims as though they read differently than allowed). Claims 1 and 23 state "*determining via ~~the~~ confidence level thresholds of the least one automatic speech recognition component whether the at least one agent has adequately followed the at least one script by using the evaluated at least one voice interaction*". Thus, the Examiner, when analyzing this claim element has not analyzed in its entirety, but rather ignored the fact that the confidence level threshold is part of the ASR component *and not a confidence level in the agents' performance* which is what every one of these quotes from Walker is pointing out. Applicant's invention specifically states clearly in the claims that the confidence level threshold is a computer analysis threshold. The ASR component analyses the voice interaction using a confidence level threshold within the software itself. *As described by the Examiner, all the portions set forth in Walker are confidence levels of the agents as evaluated by their superiors, not the software.* *Applicant has complied with 37 CFR 1.111(b) in that the above-mentioned specific*

*allegations that the claims define a patentable invention and specifically point out how the language of the claims distinguishes the claim elements from the references.*

Independent claims 1, 23, 44, 68 and 69 have been substantially amended to include the following limitations:

obtaining a further voice record of at least a portion of at least a further pre-recorded interaction or a plurality of pre-recorded interactions, wherein the plurality of pre-recorded interactions are stored in a library or data store containing exemplary interactions by the at least one agent made available for future reference, in which the at least one aspect is not deficient obtained using confidence level thresholds of an at least one automatic speech recognition component and using a score evaluated against a static or a varying standard of the least one automatic speech recognition component; and.

Support for these limitations can be found at least at pages 14 - 16 and is not found in the prior art references. Even if such a limitation were found in a prior art reference, it would not pertain to the present invention as set forth above.

As set forth above in detail, *Applicant has complied with 37 CFR 1.111(b) in that the above-mentioned specific allegations that the claims define a patentable invention and specifically point out how the language of the claims distinguishes the claim elements from the references.* Specifically, Applicant has pointed out how the Examiner's analysis of a "confidence level threshold" is lacking in a logical basis.

Moreover, Applicant has reviewed the references thoroughly and found no reference to an automatic speech recognition component score. More specifically, Applicant has found absolutely no reference to *using a score evaluated against a static or a varying standard of the least one automatic speech recognition component.* Thus, Applicant has met the burden of 37 CFR 1.111. The Examiner has the burden of prima facie showing of obviousness in light of the above amendment and argument.

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Amdt. Dated 02/09/2009  
Reply to Office Action of 12/09/2008

For the reasons set forth above, Applicant believes the independent claims, as well as the claims that depend from them, are in condition for allowance and respectfully requests they be passed to allowance.

Respectfully submitted,  
WEST CORPORATION

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